

The UAE's U-turn



S GANESHAN

Advisor (Trade-related international agreements),
Center for Environment and Agriculture, Mumbai

The country adopting the WTO-inconsistent maximum residue limit for pesticides of 0.01 parts per million—the EU's import-intolerant standard—violates the obligations it has under the FTA with India

IT TAKES TWO to tango, especially in bilateral trade agreements. The free trade agreement “Comprehensive Economic Partnership Agreement” (CEPA) between India and the UAE was signed on February 18, and came into force on May 1. India's press note on the occasion stated “overall, India will benefit from the preferential market access provided by the UAE”.

According to WTO, market access means “the conditions, tariff and non-tariff measures, agreed by the members for the entry of specific goods into their market”. Preferential market access provides countries a relative advantage against others. An FTA promises not only tariff reductions, but also reductions in non-tariff measures. When a party to a FTA chooses to breach the mutually-agreed tariff and non-tariff measures, trade eventually suffers. All FTAs come with binding and mandatory norms on sanitary and phytosanitary (SPS) measures. The CEPA is no exception.

Per the WTO, SPS measures are those applied by member countries in the field of food safety, and animal and plant health standards. The WTO Agreement on the Application of Sanitary and Phytosanitary Measures sets out the basic rules. It allows countries to set their own standards, but also says these must be based on science and risk assessment. SPS measures

include pesticide residues in the food exports. The SPS Agreement encourages WTO members to use international standards set by the Codex with regards to pesticide residues.

Pesticide residues are traces of pesticides in or on agricultural commodities at the time of harvest. Maximum Residue Limit (MRL) is a cap on such residue that is legally tolerated in food and agricultural products traded. It is often expressed in parts per million (ppm). MRL is not a toxicological safety standard, but only a trading standard.

Chapter 4 of the CEPA carries complete information about the SPS measures mutually agreed and binding between India and the UAE. It states, among others, that the parties, while facilitating trade, must:

- reinforce the SPS Agreement,
- ensure that the SPS measures implemented do not create unjustified barriers to trade,
- encourage adoption of science-based international standards and their implementation, and
- affirm their rights and obligations under the SPS Agreement.

The U-turn by UAE

After having agreed to these norms,

the UAE seems to have taken a U-turn as it now applies the European Union's (EU's) pesticide MRL of 0.01 ppm for several pesticides and food commodities. This is not in conformity with what has been expressly agreed with UAE in Chapter 4. This has significant economic and social impact on our agricultural exports to the country.

In the EU, the MRL is as low as 0.01 ppm for pesticides whose registration

and use has been withdrawn/cancelled. The 0.01 ppm cap equals 1 gm per 100 tonnes of an agricultural commodity. At this level, a pesticide residue is well past being toxicologically, biologically or environmentally relevant. It only serves as a major non-tariff barrier to access the

market. The 0.01 ppm MRL is as good as zero tolerance.

The EU import tolerance of 0.01 ppm lacks adequate support required under the WTO SPS Agreement and deviates unjustifiably from the Codex MRL which is considered to be “international standard”. When a WTO member chooses a different MRL, it must be based on risk assessment and supported by sufficient scientific evidence, as per Articles 2 and 5 of the SPS Agreement.

The EU MRL of 0.01 ppm is not based on a scientific evaluation of risks, a

requirement under Article 5.1. It is hazard-based. The WTO-SPS Agreement provides that while determining the appropriate SPS measures, the WTO members should minimise negative trade effects.

Without realising the fact that the EU import tolerance of 0.01 ppm is completely inconsistent with the SPS Agreement and, therefore, breaches Chapter 4 obligations of the CEPA, the UAE has taken to applying this. This is shocking.

Agricultural commodities that comply with our national MRLs may often be non-compliant while entering the UAE if the 0.01 ppm MRL is applied. This has emerged as the most contentious non-tariff barrier (NTB) between India and the UAE in recent months.

Rejection of exported consignments applying the WTO-inconsistent MRL of 0.01 ppm by the UAE produces serious consequences on agricultural production, price and farmers income in India.

Our directorate general of foreign trade (DGFT) does not maintain data and records about rejections by the UAE on account of the WTO-inconsistent pesticide MRL of 0.01 ppm. Our interactions with Indian exporters of spice, vegetables, rice, etc, to the country show widespread concern about the adoption of the EU standard. It is time for Indian authorities to immediately solve this through bilateral discussions.

The EU MRL is not based on a scientific evaluation of risks assessment as required by the WTO